



BOARD FOR GEOLOGISTS AND GEOPHYSICISTS
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MINUTES OF THE MEETING OF THE BOARD FOR GEOLOGISTS AND GEOPHYSICISTS

December 5, 2003

**2535 Capitol Oaks Drive
Sacramento, CA 95833-2926**

1. CALL MEETING TO ORDER

Dr. Robert Matthews, Vice President, called the meeting to order at 8:38 am. Craig Copelan, President, arrived at 8:39 am.

2. ROLL CALL TO ESTABLISH QUORUM

Craig A. Copelan, President
Robert A. Matthews, Ph.D., Vice President
William E. Black
Claude D. Fiddler
Jeffrey T. Schmidt

Others in attendance:

Paul Sweeney, Executive Officer
Gary Duke, Legal Counsel, Department of Consumer Affairs (DCA)
George Dunfield, Enforcement Manager
Tony Sawyer, Chair, Technical Advisory Committee (TAC)
Seena Hoose, TAC
Tom Crosby, TAC
Roy Shlemon, TAC
Trinda Bedrossian, California Geological Survey
Richard Bailey, Chief, REA Program, DTSC/CalEPA
Kristin Haynie, California Association of Professional Scientists
J. C. Isham
Robert Lindblom
Scott Magorien
Rick Rempel
Dr. John Williams
Warren Lester Sherling (and his wife and daughter)
Patrick Kenady, Department of Justice

Absent: Board Member Tom Ross

3. CERTIFICATES OF APPRECIATION TO SCOTT HECTOR AND J.C. ISHAM

Certificates of appreciation to Scott Hector (Examination Committee), J.C. Isham (Legislative Committee) and to Tom Ross (Board Member – last day of service 12/05/03) will be prepared by Board staff and signed by the Board President for the exemplary service provided to the Board and the regulated community by Scott Hector, J.C. Isham and to Tom Ross.

4. PUBLIC COMMENT ON NON-AGENDA ITEMS

Ms. Seena Hoose commended the Board on its outstanding enforcement program and thanked the Board for re-adopting the policy of posting enforcement actions on the Board's website. Similarly, Mr. Rick Rempel thanked the Board for its effective enforcement program and for re-adopting the policy of posting enforcement actions on the Board's website. Mr. Rempel stated that the webpage postings help establish and publicize the standard of practice in the California.

5. APPROVAL OF THE MINUTES OF THE BOARD MEETING OF SEPTEMBER 12, 2003.

Mr. Fiddler moved to approve the minutes of the open and closed sessions of the September 12, 2003, meeting.

Dr. Matthews seconded.

The motion passed unanimously.

6. SELECTION OF NEW COMMITTEE MEMBERS

Joshua Feffer was appointed the Enforcement Oversight Committee. Edward Saade, Jonathan Kuespert and Philip Ryall were appointed to the Board's Legislative Committee.

7. ENFORCEMENT REPORT

George Dunfield presented the Board's enforcement report.

The Board for Geologists and Geophysicists (Board) currently has 52 open enforcement cases: approximately 2/3 are against unlicensed individuals and 1/3 are against licensees. Mr. Dunfield noted that, under current conditions, the Board is at a statistical enforcement caseload distribution inflection point with just as many Citation and Fines being

issued as referrals to the Offices of the California Attorney General (AG) and local District Attorneys (DA). Mr. Dunfield further noted that the number of Citations and Fines being issued vs. time had continued to increase, with the exceptions of the time intervals in February to mid-March and May through June 2003 due to Board staffing issues.

Agency Statistical Profile (ASP) enforcement report statistics showed that the Board cost per case is lower compared with other DCA Boards and Bureau programs corrected for number of actions and differences in Board and Bureau staffing levels. Mr. Dunfield noted that AG referral are very expensive in enforcement staff time and direct reimbursement cost to the AG.

Board President Copelan pointed out that given the size of the BGG Board enforcement staff consisting of Mr. Dunfield it had done an outstanding job. Mr. Dunfield noted that the Board enforcement program would not be possible without the direct and active support of the Board.

Summary of Major Actions Since September 12, 2003

1. Enforcement Program Details:

- 4 New cases opened;
- 1 Complaint withdrawn by the complainant;
- 1 Cease and Desist notice issued;
- 1 Case referred to technical experts;
- 4 Citation and Fine Orders issued;
- 4 Cases referred to the Office of the Attorney General (AG) for action (one unlicensed individual and three licensees);
- 2 Cases referred to the Offices of District Attorneys (DA) (one unlicensed individual and one license); and
- 9 Cases closed.

2. Informational Items and Issues:

Met with Managers of the State Water Resources Control Board (SWRCB) underground storage tank cleanup unit to educate SWRCB management of professional licensing requirements and to discuss the applicability of these requirements to the SWRCB programs. Mr. Dunfield noted that previous experience has shown that compliance by regulators has greatly increased general compliance in the areas of practice where regulators and been proactive in protecting the public through high professional standards afforded by professional licensure.

The Board issued a Citation and Fine of \$2,500.00 to Christopher Kramer, Registered Geologist No. 3842, Certified Engineering Geologist No. 1231 for violations of Business and Professions Code §7860 and §3065(a)(2), §3065(b)(4) and §3065(b)(8) of Title 16, California Code of Regulations (CCR).

Reports signed and certified by Mr. Kramer as "Engineering Geologist" were found by the Board to lack geologic data and associated interpretation including; adequate geologic unit contact characterization, proper symbology representing areas of significant colluvial deposits and underlying bedrock, strike and dip of bedding and geologic cross-section lines, adequate locations of seeps and springs, and therefore departed from the standard of practice of a Registered Geologist or Certified Engineering Geologist.

The standard of practice of a Registered Geologist or Certified Engineering Geologist working under similar circumstances requires that a reasonable professional submit a complete report of geologic (and/or engineering geologic and/or hydrogeologic) conditions which include factually accurate representations of geologic datum and conditions so that technically defensible opinions, conclusions and recommendations are substantiated and logically documented in the reporting record. The case was closed on November 21, 2003. (see attached public notification)

Board enforcement staff in conjunction with the AG acquired a Temporary Restraining Order (TRO) in a case, which represents the first use of an additional enforcement tool for the Board to drive licensed practitioners failing to meet the standard of practice and unlicensed persons toward compliance.

Paul Sweeney stated for the record that George Dunfield is doing an outstanding job.

8. UPDATE ON FOREST PRACTICE ISSUES

The Board reviewed the North Coast Water Quality Control Board's request to table this item to the next Board meeting. However, the Board did listen to a report from Trinda Bedrossian of the California Geological Survey. Ms. Bedrossian had attended the NCRWQCB's meeting on Wednesday, December 3, 2003 in Eureka and reported on that meeting to the Geology Board.

The Board discussed the issues regarding forest practice and the requirement for geologic licensure and directed the Executive Officer to prepare and send a letter to the Undersecretary of CalEPA requesting a meeting to discuss the Geology Board's concerns.

The Board tabled the Executive Officer's report until after the hearing for license reinstatement for Warren Lester Sherling.

9. HEARING ON PETITION FOR REINSTATEMENT OF REVOKED LICENSE OF WARREN LESTER SHERLING OAH# N2003110309

The Board listened to the case for potential reinstatement of Warren Lester Sherling's Registered Geologist and Certified Engineering Geologist licenses.

10. CLOSED SESSION

11. RESULTS OF CLOSED SESSION

The Board discussed the deliberations that it had heard regarding the potential reinstatement of Mr. Sherling's licenses. The Board will make a decision on this issue at the next Board meeting and after reviewing the Administrative Law Judge's opinion.

12. TECHNICAL ADVISORY COMMITTEE REPORT

The TAC discussed the different case studies that had been presented to the Board and the Committee (Leach Fields and Vadose Zone). The Committee decided to meet again on April 16, 2004 apart from the Board in order to finalize the case studies.

A soil scientist spoke about the excellent cooperation that he had been receiving from Tom Crosby of the TAC on the soil sampling case study.

13. CONSIDERATION OF NEW LEGISLATIVE PROPOSALS

The Board unanimously voted to pursue three legislative proposals.

The first one is to change "Registered Geologist" to "Professional Geologist" everywhere in the Board's Statute and Regulations.

The second one is to allow graduates in geology to take the ASBOG Fundamentals of Geology examination at any point after graduation. The Board would still require candidates for licensure to have the necessary experience before being allowed to take the ASBOG Practice of Geology and the California specific examination.

The third unanimously approved legislative proposal is to fold the Registered Environmental Health Specialist program (currently at the Department of Health Services) and the Registered Environmental

Assessor program (currently at the California Environmental Protection Agency) into the Board for Geologists and Geophysicists. The intent would be to enhance those programs by promoting a form of licensure that currently does not exist in these programs. Legislators and others have consistently inquired over the years about the lack of existence of an "environmental professional." This proposals addresses that concern.

14. EXAMINATION COMMITTEE REPORT

Mr. Sweeney reported that the Committee met on November 14, 2003. Dr. Tom Kelty of CSULB attended his first meeting as a Committee Member and was a valuable contributor. The Committee will meet again on February 6, 2004 to finalize the Board's licensing examinations that will be used on March 6, 2004.

14. CLOSED SESSION

16. REPORT ON RESULTS OF CLOSED SESSION

The Board took no action on Superior Court of the State of California for the County of Orange Case No. 02CC17018.

17. REPORT FROM BOARD ATTORNEY ON STATUS OF ASIGNMENTS

Gary Duke, Legal Counsel for the Board, explained to the Board some of the limitations on the Board's rulemaking process as a result of Governor Schwarzenegger's Executive Order S-2-3. The Board's proposed fee

Increase regulations will have to wait a minimum of six months before they can be started.

The Board then revisited Agenda Item #9, EXECUTIVE OFFICER'S REPORT

Paul Sweeney presented the Budget Report. The Board is still in a surplus situation, even though it will very tight towards the beginning of the next fiscal year.

Paul Sweeney then spoke about possibly attending the California Association of Realtors conference in San Diego as well as both the Northern and Southern California conferences for the California Environmental Health Association.

18. REPORT ON NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG) ACTIVITIES

Dr. John Williams represented the State of California at the ASBOG Annual Meeting in Jacksonville, Florida (October 28 to November 2, 2003). The meeting consisted of three main portions: Business Meeting, Council of Examiners meeting, and Administrators workshop. As directed by the Board, he voted against the proposed changes to ASBOG's Charter and Bylaws, which were adopted by a majority vote by of ASBOG delegates. Dr. Williams indicated that one-time new member revenue has been decreasing therefore requiring the evaluation of a possible per examination fee increase. Dr. Williams reported that he indicated that one to two years would be required for Boards to enact the required legislative or regulatory measures to allow any examination fee increase. In response to the request for an audit of ASBOG accounts, ASBOG released various Federal tax/income related documents Dr. Williams reported. The Board thanked Dr. Williams for his sustained service to the Board.

19. ANNOUNCEMENTS/ACTIVITIES OF BOARD MEMBERS

There were no announcements.

20. ADJOURN MEETING

Craig Copelan adjourned the meeting at 5:00 PM.

CRAIG A. COPELAN, P.E., BOARD PRESIDENT

George Dunfield, R.G., Acting Executive Officer

Date Approved: